

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA *ex rel.*
LAURIE SIMPSON,

Plaintiff,

v.

BAYER CORPORATION et al.,

Defendants.

Honorable John M. Vazquez
United States District Court Judge

Honorable Joseph A. Dickson
United States Magistrate Judge

Honorable Dennis M. Cavanaugh
Special Master

Civ. No. 05-3895 (JMV)(JAD)

JOINT STIPULATION TO AMEND SCHEDULING ORDER

Counsel for Plaintiff-Relator Laurie Simpson (“Plaintiff-Relator”) and Defendants Bayer Corporation, Bayer HealthCare Pharmaceuticals, Inc., and Bayer HealthCare LLC (collectively, “Bayer”) hereby agree and stipulate as follows:

1. On April 16, 2020, the Court entered a Joint Stipulation to Amend Scheduling Order. [ECF No. 369].

2. Since that time, the Parties have completed their respective document productions, exchanged privilege logs, and continued pursuing written discovery. On June 26, 2020, Plaintiff-Relator served her First Set of Interrogatories on Bayer, to which Bayer has responded. On August, 18, 2020, Bayer served its Second

Requests for Interrogatories on Plaintiff-Relator, responses to which Plaintiff-Relator is currently drafting.

3. The Court has also since resolved a number of the Parties' previous discovery disputes. Specifically, on April 16, 2020, Special Master Cavanaugh denied the Parties' respective motions to compel document production, filed on December 2, 2019, December 6, 2019, and December 20, 2019, and denied Bayer's motion to compel Plaintiff-Relator to provide complete responses to Requests Nos. 1-14, 18-19, and 22 of Bayer's Second Requests for Production and Interrogatories 1-5 of Bayer's First Requests for Interrogatories. [ECF Nos. 370 and 371].

4. Additionally, the parties have conferred multiple times and are continuing to meet and confer on the number and scheduling of depositions. To date, Plaintiff-Relator has taken two depositions. The scheduling of further depositions, however, has been delayed and complicated due to the COVID-19 pandemic and stay-at-home orders, which have effectively precluded in-person depositions since March.

5. In light of the restrictions necessitated by the COVID-19 pandemic, the Parties are conferring on the details of a stipulated remote deposition protocol to allow for additional depositions to be taken remotely. The Parties' meet-and-confer discussions have also addressed and continue to address whether the Parties will agree to depositions beyond the ten depositions authorized without leave of Court

by Federal Rule of Civil Procedure 30 (“Rule 30”). To that end, Plaintiff-Relator has provided Bayer with non-exhaustive lists of current and former Bayer employees and third-party witnesses whom Plaintiff-Relator has identified as potential deponents, which Bayer is reviewing.

6. Meanwhile, Bayer continues to seek discovery from the Government by way of third-party subpoena. Bayer maintains that the Government’s productions in response to those subpoenas are incomplete and moved to compel production by the Government on March 25, 2020. Third-party litigation regarding those subpoenas remains active.

7. Specifically, following the Special Master’s March 26, 2020 Order granting the Government’s motion to quash or modify Bayer’s third-party subpoena issued to CMS, Bayer requested a stay so that it could seek reconsideration of that Order, which the Special Master granted on March 31, 2020. By Order dated July 15, 2020, the Special Master denied Bayer’s motion for reconsideration and lifted the stay of the March 26, 2020 Order. [ECF No. 376]. On August 24, 2020, the Special Master denied the Government’s request to shift to Bayer the costs and expenses incurred as a result of Bayer’s subpoena. [ECF No. 377]. On September 8, 2020, the Government appealed the Special Master’s August 24, 2020 Order [ECF No. 378], which remains pending before the Court. Bayer’s motion to compel document production in response to five other subpoenas issued to governmental

agencies and the Government's cross motion to quash those subpoenas remain outstanding. [ECF No. 375]. Bayer maintains that the third-party discovery that it seeks from the Government is important to address issues raised by the Government at the hearings on the Parties' cross-motion for summary judgment. [ECF No. 351 at 32-33 n.17.]

8. In light of the present discovery schedule's cut-off of fact discovery on October 15, 2020, the complications posed by arranging for remote depositions, the number of witnesses yet to be deposed, and the Parties' ongoing negotiations regarding the number of depositions to be taken without leave under Rule 30, in addition to Bayer's ongoing third-party discovery disputes with the Government, the Parties jointly propose and stipulate to amend the case schedule for the Parties' discovery as follows:

Event	Current Deadline	Proposed New Deadline
Document Production Completed	June 29, 2020	
Privilege Logs Due	July 27, 2020	
Fact Discovery Completed	October 15, 2020	April 13, 2021
Initial Expert Witness Disclosure and Report Due (for party bearing burden of proof)	November 19, 2020	May 18, 2021
Rebuttal Expert Witness Disclosure and Report Due (for party not bearing burden of proof)	January 4, 2021	July 6, 2021

Expert Witness Replies Due (for party bearing burden of proof)	January 25, 2021	July 26, 2021
Expert Discovery Completed	February 14, 2021	August 13, 2021
Opening Dispositive Motions Due	March 18, 2021	September 14, 2021
Opposing Dispositive Motions Due	April 22, 2021	October 19, 2021
Reply Dispositive Motions Due	May 13, 2021	November 9, 2021
Daubert Motions Completed	June 17, 2021	December 14, 2021
Motions in Limine Due	August 12, 2021	February 8, 2022
Exhibit Lists Due	August 12, 2021	February 8, 2022
Jury Instructions Due	August 12, 2021	February 8, 2022
Opposing Motions in Limine Due	August 30, 2021	February 28, 2022
Exhibit List Objections Due	August 30, 2021	February 28, 2022
Jury Instruction Objections Due	August 30, 2021	February 28, 2022
Reply Motions in Limine Due	September 8, 2021	March 7, 2022
Exhibit List Replies Due	September 8, 2021	March 7, 2022
Jury Instruction Replies Due	September 8, 2021	March 7, 2022
Final Pre-Trial Conference	September 15, 2021	March 14, 2022

WHEREFORE, the Parties, through their respective counsel, respectfully request that the Court approve the foregoing amended, joint case schedule.

Dated: September 16, 2020

/s/ James E. Cecchi

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Respectfully submitted,

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Civ. No. 05-3895 (JMV)(JAD)

[PROPOSED] AMENDED SCHEDULING ORDER

THIS MATTER having come before the Court through joint stipulation of Plaintiff-Relator Laurie Simpson (“Plaintiff-Relator”) and Defendants Bayer Corp., Bayer Healthcare Pharmaceuticals, Inc., and Bayer Healthcare LLC (collectively, “Bayer”), requesting that the Joint Stipulation To Amend Scheduling Order, entered by the Special Master on April 16, 2020, be amended and for good cause shown,

IT IS HEREBY ORDERED THAT the Scheduling Order shall be amended as follows:

Event	Current Deadline	Proposed New Deadline
Document Production Completed	June 29, 2020	
Privilege Logs Due	July 27, 2020	
Fact Discovery Completed	October 15, 2020	April 13, 2021

Initial Expert Witness Disclosure and Report Due (for party bearing burden of proof)	November 19, 2020	May 18, 2021
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Dated: 9-16-20

A handwritten signature in black ink, appearing to read "Dennis M. Cavanaugh", written over a horizontal line.

Dennis M. Cavanaugh, U.S.D.J. (Ret.)
Special Master